

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES A. WALKER,

Plaintiff,

v.

PRIMECORE MEDICAL INC.,

Defendant.

DECISION AND ORDER

23-CV-6555DGL

The Court previously reviewed a complaint filed by pro se plaintiff James A. Walker (“plaintiff”), asserting claims under 42 U.S.C. §1983 (“Section 1983”), along with an application to proceed in forma pauperis (“IFP”). (Dkt. #1, #2). In his complaint, plaintiff alleges that the defendant, a medical care provider, improperly and mistakenly shared his medical information with another inmate, who happened to share the same name as plaintiff, and was incarcerated in the same facility. (Dkt. #1).

In reviewing the sufficiency of the complaint, the Court noted that it failed to state a claim for violation of Fourteenth Amendment privacy rights, because it: (1) failed to allege that the disclosure was other than inadvertent or negligent; (2) failed to identify the nature of the medical information that was disclosed, frustrating the Court’s determination of the strength of the privacy interest at issue; and (3) failed to allege facts by which defendant, a private contractor, could be found to have maintained an unconstitutional policy or custom, or to have acted under color of law, for purposes of liability under Section 1983. (Dkt. #5).

Accordingly, on December 6, 2023, the Court issued an Order granting plaintiff's motion for IFP status, finding that the complaint failed to state a claim upon which could be granted, and directing plaintiff to file an amended complaint, to cure the deficiencies of the original, no later than 45 days after entry of that order. Plaintiff was specifically and repeatedly warned that unless he filed an amended complaint within 45 days, his complaint would have to be dismissed with prejudice pursuant to 28 U.S.C. §§1915(e)(2)(B) and 1915A. (Dkt. #5).

Fifty (50) days have now elapsed, and plaintiff has not filed an amended complaint, requested an extension of time, or otherwise responded to the Court's December 6, 2023 Order. The Complaint is, therefore, dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A, for failure to state a claim upon which relief may be granted.

CONCLUSION

For the foregoing reasons, it is hereby:

ORDERED that plaintiff's complaint (Dkt. #1) is DISMISSED without prejudice, for failure to state a claim upon which relief may be granted; and it is further

ORDERED, that the Clerk shall serve a copy of this Decision and Order on plaintiff.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 25, 2024.